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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,872	01/24/2002	Samuel Kallner	KALLNERI	5341
1444 7590 01/07/2008 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			EXAMINER AILES, BENJAMIN A	
			ART UNIT 2142	PAPER NUMBER
			MAIL DATE 01/07/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/053,872

Applicant(s)

KALLNER ET AL.

Examiner

Benjamin A. Ailes

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-16,26,29-41,56 and 59-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,4-13,26,29-38,56 and 59-68 is/are allowed.
- 6) ☒ Claim(s) 14-16,39-41,69-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 August 2007 has been entered.

Claims 1, 4-16, 26, 29-41, 56, and 59-71 remain pending.

Response to Declaration

2. The Declaration filed on 23 August 2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Klein (US 6,999,448 B1) reference with respect to claims 14-16.

3. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Klein reference with respect to dependent claims 14-16, 39-41 and 69-71. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). In the filed Declaration the applicants have shown conception of the present invention on or before March 13, 2000 using Exhibit A titled "Network Infrastructure Design" and have also

including claim mapping clearly showing how Exhibit A discloses each and every element of claims 1 and 4-13. By showing conception of filed claims 1 and 4-13, applicants' have also shown conception of the corresponding claims, claims 26, 29-38, 56 and 59-68. While the applicants have shown conception of filed claims 1, 4-13, 26 29-38, 56 and 59-68, the applicants have not shown conception of all dependent claims, namely 14-16, 39-41 and 69-71. It is unnecessary for the applicants to demonstrate conception for all of the dependent claims, namely 14-16, 39-41 and 69-71, if the dependent claims are obvious variations. As discussed in the interview held on 05 June 2007, the examiner has required the applicant to indicate in a new declaration that the dependent claims, namely claims 14-16, 39-41 and 69-71, are obvious variants of claims 1 and 4, 26 and 29, and 56 and 59. The filed declaration fails to fulfill this requirement because the applicant has failed to place a clear admission of obviousness on the record. Instead the applicant has stated, for example in view of claim 14 on page 11 of the declaration, that in view of the rejection that: "If this rationale were conceded to be correct, then it would have been obvious to the person of ordinary skill to create..." The applicant has made similar statements for claims 15 and 16.

Priority

4. In view of the insufficiencies of the declaration filed 23 August 2007 as set forth above, different claims in the instant application are assigned different priority dates as outlined below.

Date	Claims
March 13, 2000	1, 4-13, 26, 29-38, 56, 59-68
September 6, 2001	14-16, 39-41, 69-71

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 15, 16, 40, 41, 70 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smyk (U.S. 6,597,686) in view of Gaus et al. (U.S. 6,778,652 B2), hereinafter referred to as Gaus and further in view of Klein (U.S. 6,999,448 B1).

8. Claims 15, 16, 40, 41, 70 and 71 are rejected for the same reasons as set forth in the previous office action mailed 23 March 2007.

9. Claims 14, 39, and 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smyk, Gaus, and Klein in view of Hetz (U.S. 6,185,289).

10. Claims 14, 39 and 69 are rejected for the same reasons as set forth in the previous office action mailed 23 March 2007.

Allowable Subject Matter

11. Claims 1, 4-13, 26, 29-38, 56 and 59-68 allowed.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin A. Ailes whose telephone number is (571)272-3899. The examiner can normally be reached on M-F 6:30-4, IFP Work Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571)272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

baa



ANDREW CALDWELL
SUPERVISORY PATENT EXAMINER